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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,423	03/30/2001	Michael A. Popp	SSM488US	1226
<div>7590 James C Simmons Ratner &amp; Prestia One Westlakes Berwyn Suite 301 PO Box 980 Valley Forge, PA 19482-0980</div>			<div>EXAMINER MANOHARAN, VIRGINIA</div> <div>ART UNIT 1764</div> <div>PAPER NUMBER</div>	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		12/22/2006	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

09/806,423

Applicant(s)

POPP ET AL.

Examiner

Virginia Manoharan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4-14,16,17,19,27,30-32,35-41,43-50 and 52-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-14,16,17,19,27,30-32,35,41,45-50 and 52 is/are rejected.
- 7) ☒ Claim(s) 43,44,53 and 54 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 1, 4-13, 27, 30-32, 35- 41 and 52 are rejected under 35 U.S.C. 1 12, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 is at odds with the claim from which it depends, i.e., claim 1 for the same reason as set forth at page 2, last paragraph of the previous Office action.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14, 16, 17, 19, 27, 39-41 and 45- 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higashi et al (4,600,477).

The above reference is applied for the same reasons as set forth at the paragraph bridging pages 3 and 4 thru first full paragraph of page 4 Claims 17,19, 40-41 and 45-49 are rejected under 35 U.S.C. 103(a) as being of the previous Office Action.

Claims 43-44 and 53-54 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1, 4-13, 30-32, 35-38 and 52 would be allowable if rewritten or amended to overcome the rejections) under 35 U.S.C. 1 12, 2nd paragraph, set

forth in this Office action.

Applicants' arguments filed October 4, 2006 have been fully considered but they are not persuasive.

112 REJECTION:

However, while it is true that both claims use the term "comprise" and are therefore open-ended, as argued, however, it is equally true that a dependent claim incorporates every features of the claim from which it depends and cannot change nor orient the limitation already recited in the claim from which it depends. Reciting "further comprises" in claim 5 would obviate this rejection.

103 REJECTION:

Applicants' arguments that "Higashi et al. does not teach or suggest the step of recycling liquid condensate... Instead, Higashi et al. discloses a process in which vapor is recycled to a vaporizer by compression to achieve a heat exchange with the feed..... Higashi et al. reflect vapor recycling, not recycling of liquid...Moreover, Higashi et al. does not discuss maintaining a substantially constant ratio of more volatile to less volatile constituents in the solution in the evaporator" are not persuasive of patentability because of the following reasons:

As shown in Figs. 2 and 3 of Higashi a portion of the condensate is discharged at (42) while another portion is recycled to distilling column (4) which would read on the argued process/method of recycling at least part of said liquid condensate to said evaporator as claimed e.g., in claim 14. Moreover, col. 4, lines 50-54 of Higashi would at least be suggestive of the argued "a substantially constant ratio of more volatile to less volatile

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constituents in the solution in the evaporator". That is, Higashi's reference to lower boiling point fraction (corresponding to the claimed more volatile) and higher boiling point fraction (corresponding to the claimed less volatile) tells an artisan that the two fractions occur in certain amount or ratio relative to one another. Optimizing this ratio is of the essence within the skilled of the art.

Absolute predictability is not a prerequisite for obviousness rejection. All that is required to show obviousness is that the applicant make his claimed invention merely by applying knowledge clearly present in the prior art. Section 103 requires us to presume full knowledge by the inventor of the prior art in the field of his endeavor. See In re Winslow, 53 CCPA 1574, 1578, 365 F.2d 1017, 1020, 151 USPQ 48, 50-51 (1966). No commercial success is claimed, nor is any other factor indicating nonobviousness shown to exist.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Virginia Manoharan whose telephone number is 571-272-1450.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola, can be reached on 571-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
VIRGINIA MANOHARAN  
PRIMARY EXAMINER  
ART UNIT 123/164